

1 ETHAN P. DAVIS
Acting Assistant Attorney General
2 WILLIAM D. HYSLOP
United States Attorney
3 ALEXANDER K. HAAS
Branch Director
4 ERIC J. SOSKIN
Senior Trial Counsel
5 KERI L. BERMAN
KUNTAL V. CHOLERA
6 JOSHUA M. KOLSKY, DC Bar No. 993430
JASON C. LYNCH
7 Trial Attorneys
8 United States Department of Justice
Civil Division, Federal Programs Branch
9
10 *Attorneys for Defendants*

11 **UNITED STATES DISTRICT COURT**
12 **EASTERN DISTRICT OF WASHINGTON**
AT SPOKANE

13 STATE OF WASHINGTON, *et al.*,

14 Plaintiffs,

15 v.

16 UNITED STATES DEPARTMENT OF
17 HOMELAND SECURITY, *et al.*,

18 Defendants
19
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21
22

No. 4:19-cv-5210-RMP

REPORT PURSUANT TO MAY 13,
2020 ORDER

1 Defendants respectfully submit this report pursuant to the Court's May 13, 2020
2 Order Denying in Part and Granting in Part Defendants' Motion to Stay Discovery Order
3 re: Privilege Log ("Order"). ECF No. 219. The Court ordered Defendants to produce a
4 privilege log pertaining to Defendants' administrative record on a rolling basis starting
5 on June 12, 2020. *Id.* at 6. The Court further ordered Defendants to make reports to the
6 Court and Plaintiffs every other Friday, on their progress toward completion of the
7 privilege log. *Id.*

8 **Notifying Custodians of Obligation to Preserve Documents**

9 First, the Court ordered Defendants to report on their progress in "notifying
10 potential custodians of their obligation to preserve potentially relevant documents, even
11 if assertedly privileged[.]" Order at 6. As discussed in Defendants' June 12, 2020 report,
12 Defendants have notified all potential custodians of their obligation to preserve
13 potentially relevant documents, even if assertedly privileged.

14 **Segregating Privileged Documents for Review**

15 Second, the Court ordered Defendants to report on their progress in "segregating
16 all assertedly privileged documents for review." Order at 6.

17 As Defendants reported in their June 26, 2020 report, email records for all
18 custodians have been collected. The emails for those custodians have been batched for
19 review by the Department of Justice.

20 Although email records are expected to constitute the vast majority of documents
21 subject to the Court's Order, Defendants are also working to collect non-email electronic
22 documents and paper documents, if any, that do not also exist in electronic form. At this

1 time, due to the COVID-19 crisis and the telework status of most agency personnel,
2 Defendants cannot determine whether there are any paper documents that will need to be
3 collected, as those documents are physically located in agency offices and are therefore
4 currently inaccessible.

5 **Logging Privileged Documents**

6 Third, the Court ordered Defendants to report on their progress in logging
7 privileged documents pursuant to Fed. R. Civ. P. 26(b)(5)(A). Order at 6. As of August
8 21, 2020, 48,339 documents have been batched for review in the DOJ document review
9 platform. 7,090 of those documents have been reviewed and 162 are listed on the
10 privilege log.¹ In addition, several documents have been identified that contain third
11 party equities and which Defendants expect to include in future installments of the
12 privilege log after consulting with the appropriate third parties.

13
14 Dated: August 21, 2020

Respectfully submitted,

15 ETHAN P. DAVIS

16 Acting Assistant Attorney General

17 WILLIAM D. HYSLOP

18 United States Attorney

19 ALEXANDER K. HAAS

20 Branch Director

21 ¹ In percentage terms, roughly 14.7% of the batched documents have been reviewed. As
22 noted above, additional documents may be added to the review platform.

/s/ Joshua M. Kolsky

ERIC J. SOSKIN

Senior Trial Counsel

KERI L. BERMAN

KUNTAL V. CHOLERA

JOSHUA M. KOLSKY, DC Bar No. 993430

JASON C. LYNCH

Trial Attorneys

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street NW

Washington, D.C. 20005

Tel: (202) 305-7664

Fax: (202) 616-8460

Joshua.kolsky@usdoj.gov

Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to all users receiving ECF notices for this case.

/s/ Joshua Kolsky

JOSHUA KOLSKY

United States Department of Justice

Civil Division, Federal Programs Branch

1100 L Street, NW

Washington, D.C. 20005

Attorney for Defendants